

Appl. No. 10/632,375
Arty. Docket No. AA540C
Amdt. dated November 18, 2005
Reply to Office Action of July 25, 2005
Customer No. 27752

REMARKS

Claims 1-20 are pending in the present application. Claim 1 has been amended to further define the present invention wherein the matter of Claim 3, 4, 5, 6, 7, and 8 have been incorporated into the claims and a further defining of the phase changing agent. Claims 3-8 have been canceled.

Further, Claim 1 has been amended wherein the inert carrier is polyethylene glycol having the formula $H(OCH_2CH_2)_n-OH$ wherein n has an average value of from 4 to 12. Support for this amendment is found in the specification on page 7, lines 25-27.

Claim 1 has further been defined wherein the phase changing agent has a melting point of from 35°C to 60°C. Further, the term "about" has been deleted from Claim 1 for the melting point temperature ranges of the phase changing agent. Support for this amendment is found on page 5 of the specification at lines 34-36.

Claim 19 has been amended wherein elements (a), (b) and (f) have been amended in same manner as Claim 1 and support is found the claims, as originally filed.

It is believed these changes do not involve any introduction of new matter. Consequently, entry of these changes is believed to be in order and is respectfully requested.

REJECTIONS

103 Rejections

1) Claims 1, 3-8, 12-16, 18 and 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over US 5,538,720 ('720). Applicants respectfully traverse this rejection.

In order to establish a prima facie case of obviousness, the Examiner must show that (1) there is some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings, (2) there is a reasonable expectation of success, and (3) all of the limitations of the claims are taught or suggested in the prior art (M.P.E.P. 2143).

However, all of the limitation of the claims are not taught or suggested in the prior art. '720 discloses a composition for hair treatment comprising at least two compositions that are kept separate until application and which upon mixing increase in viscosity while generating heat, wherein the composition comprises an anhydrous mixture of a physiologically compatible salt that generates heat when mixed with water and at least one thickening agent, and further comprises at least one polyalcohol that is liquid at 25°C.

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However, all of the limitation of the claims are not taught or suggested in the prior art. Specifically, as the Examiner asserts, '720 fails to teach a phase changing agent that has a melting point of about 30 degrees C to about 60 degrees C. However, the Examiner has asserted that '720 teach a composition with several cationic polymers, surfactants, thickeners that include the read on the instant phase changing material. And the Examiner further states that the term "about" of the instant claims allows for the component B of '720 (which has a melting point of 25 degrees C), which is within the "about" range of the instant claims.

However, '720 does not disclose or teach a phase changing agent having a melting point of from 35°C to 60°C, as now incorporated into Claim 1 of the present invention. Component B of '720, which requires a melting point of 25 degrees C, is not within the range of the present invention having a phase changing agent having a melting point of from 35°C to 60°C, as now required in amended Claim 1.

Further, '720 does not disclose a phase changing agent selected from the group consisting of cetyl alcohol, stearyl alcohol, and mixtures thereof, as now incorporated into Claim 1 of the present invention. There is no teaching in '720 for the use of a phase changing agent selected from the group consisting of cetyl alcohol, stearyl alcohol and mixtures thereof and '720 provides no motivation to select this specific phase changing agent, as now required in the present invention.

Further, '720 does not specifically teach the use of anhydrous magnesium sulfate heat generating agent as is now required in the present invention. '720 discloses that the physiologically compatible salt that develops heat when mixed with water is preferably a bivalent metal chloride. Therefore, one of skill in the art would be motivated by the teaching of '720 to select a bivalent metal chloride, not an anhydrous magnesium sulfate, as now required by the present invention.

Therefore, all of the limitations of the claims, as now amended, are not taught or suggested '720. Applicants have shown that there is therefore no prima facie cast of obviousness and respectfully request withdraw of the rejection.

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2) Claims 17 and 19 are rejected under 35 U.S.C. 103(a) as being unpatentable over US 5,538,720 ('720) as applied to claims 1-8, 12-16, 18 and 20 above, and further in view of US 6,540,989 to Janchitraponvej ('989). Applicants respectfully traverse this rejection.

The Examiner asserts that '720 fails to teach the claimed amido amines of the instant claims. '989 teaches a self-warming hair composition comprising a glycol, a quaternary ammonium compound, an amidoamine and a silicone. The Examiner asserts that it would have been obvious for one of skill in the art at the time of the invention to add amido amine of '989 to the composition of '720. Applicants respectfully traverse this rejection.

However, all of the limitation of the claims are not taught or suggested in the prior art. Specifically, as the Examiner asserts, '720 fails to teach a phase changing agent that has a melting point of about 30 degrees C to about 60 degrees C. However, the Examiner has asserted that '720 teach composition with several cationic polymers, surfactants, thickeners that include the read on the instant phase changing material. And the Examiner further states that the term "about" of the instant claims allows for the component B of '720 (which has a melting point of 25 degrees C), which is within the "about" range of the instant claims.

However, '720 does not disclose or teach a phase changing agent having a melting point of from 35°C to 60°C, as now incorporated into Claim 1 of the present invention. Component B of '720, which requires a melting point of 25 degrees C, is not within the range of the present invention having a phase changing agent having a melting point of from 35°C to 60°C, as now required in amended Claim 1.

Further, '720 does not disclose a phase changing agent selected from the group consisting of cetyl alcohol, stearyl alcohol, and mixtures thereof, as now incorporated into Claim 1 of the present invention. There is no teaching in '720 for the use of a phase changing agent selected from the group consisting of cetyl alcohol, stearyl alcohol and mixtures thereof and provides no motivation to select this specific phase changing agent, as now required in the present invention.

Further, '720 does not specifically teach the use of anhydrous magnesium sulfate heat generating agent as is now required in the present invention. '720 discloses that the physiologically compatible salt that develops heat when mixed with water is preferably a bivalent metal chloride. Therefore, one of skill in the art would be motivated by the teaching of '720 to select a bivalent metal chloride, not an anhydrous magnesium sulfate, as now required by the present invention.

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Therefore, all of the limitations of the claims, as now amended, are not taught or suggested '720.

Likewise, '989 neither teaches a phase changing agent having a melting point of from 35°C to about 60°C, as now required by the present invention, nor does '989 teach a phase changing agent selected from the group consisting of cetyl alcohol, stearyl alcohol, and mixtures thereof, as now incorporated into Claim 1 of the present invention, nor does '989 teach the use of an inorganic heat generating agent being anhydrous magnesium sulfate, each of which is now required by the present invention in Claim 1 and from which Claims 17 and 19 depend. Applicants have shown that there is therefore no prima facie case of obviousness and respectfully request withdraw of the rejection.

3) Claims 9-11 are rejected under 35 U.S.C. 103(a) as being unpatentable over US 5,538,720 ('720) as applied to claims 1-8, 12-16, 18 and 20 above, and further in view of EP 027 730 (EP '730). Applicants respectfully traverse this rejection.

The Examiner asserts that Claims 9-11 recite polyoxyalkylene derivatives; in particular Claim 8 recites polyoxyethylene/polyoxypropylene block copolymer. The Examiner asserts that '720 fails to specifically teach the claimed polyoxyalkylene derivatives of the instant claims. EP '730 teaches cosmetic compositions for hair or skin treatment, comprising heat generating compounds when brought into contact with water. Among the heat generating compounds EP '730 teaches fatty alcohols, alkylene glycols and polyoxyalkylene derivatives. Therefore, the Examiner asserts that it would have been obvious for one of skill in the art to use pluronic or any other suitable polyoxyalkylene derivatives as heat generating agents in the composition of '720 because EP '730 teaches that the above polyoxyalkylene derivatives are preferable as heat generating compounds and suggest that the heat generating compound give an excellent finishing and cleansing effect to consumer upon application, which results in a comfortable hot feeling.

However, all of the limitation of the claims are not taught or suggested in the prior art. Specifically, as the Examiner asserts, '720 fails to teach a phase changing agent that has a melting point of about 30 degrees C to about 60 degrees C. However, the Examiner has asserted that '720 teach composition with several cationic polymers, surfactants, thickeners that include the read on the instant phase changing material. And the Examiner further states that the term "about" of the instant claims allows for the component B of '720 (which has a melting point of 25 degrees C), which is within the "about" range of the instant claims.

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However, '720 does not disclose or teach a phase changing agent having a melting point of from 35°C to 60°C, as now incorporated into Claim 1 of the present invention. Component B of '720, which requires a melting point of 25 degrees C, is not within the range of the present invention having a phase changing agent having a melting point of from 35°C to 60°C, as now required in amended Claim 1.

Further, '720 does not disclose a phase changing agent selected from the group consisting of cetyl alcohol, stearyl alcohol, and mixtures thereof, as now incorporated into Claim 1 of the present invention. There is no teaching in '720 for the use of a phase changing agent selected from the group consisting of cetyl alcohol, stearyl alcohol and mixtures thereof and provides no motivation to select this specific phase changing agent, as now required in the present invention.

Further, '720 does not specifically teach the use of anhydrous magnesium sulfate heat generating agent as is now required in the present invention. '720 discloses that the physiologically compatible salt that develops heat when mixed with water is preferably a bivalent metal chloride. Therefore, one of skill in the art would be motivated by the teaching of '720 to select a bivalent metal chloride, not an anhydrous magnesium sulfate, as now required by the present invention.

Therefore, all of the limitations of the claims, as now amended, are not taught or suggested '720. Applicants have shown that there is therefore no prima facie cast of obviousness and respectfully request withdraw of the rejection.

Likewise, '730 neither teaches a phase changing agent having a melting point of from 35°C to about 60°C, as now required by the present invention, nor does '730 teach a phase changing agent selected from the group consisting of cetyl alcohol, stearyl alcohol, and mixtures thereof, as now incorporated into Claim 1 of the present invention, nor does '730 teach the use of an inorganic heat generating agent being anhydrous magnesium sulfate, each of which is now required by the present invention in Claim 1 and from which Claims 9-11 depend. Applicants have shown that there is therefore no prima facie cast of obviousness and respectfully request withdraw of the rejection.

Conclusion

Applicants have made an earnest effort to place their application in proper form and distinguish their claimed invention from the prior art which was applied in the July 25, 2005 Office Action. WHEREFORE, consideration of this application, consideration of the

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accompanying claims and claim amendments submitted herewith, withdrawal of the rejections under 35 U.S.C 103, and allowance of Claims 1 and 9-20 are respectfully requested.

Respectfully submitted,

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